

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL



Commissioners

KARL ZOBRIST
Chair

KENNETH McCLURE

DUNCAN E. KINCHELOE

HAROLD CRUMPTON

M. DIANNE DRAINER
Vice Chair

William F. Caton

Acting Secretary

Federal Communications Commission

1919 M Street NW, Room 222

Washington DC 20426

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
(573) 751-3234
(573) 751-1847 (Fax Number)
(573) 526-5695 (TT)
September 12, 1996

VACANT
Executive Secretary
SAM GOLDAMMER
Director, Utility Operations
GORDON L. PERSINGER
Director, Policy & Planning
KENNETH J. RADEMAN
Director, Utility Services
DONNA M. PRENGER
Director, Administration
CECIL I. WRIGHT
Chief Administrative Law Judge
VACANT
General Counsel

RE: FCC 96-150 In the Matter of Implementation of the Telecommunications Act of 1996;
Accounting Safeguards Under the Telecommunications Act of 1996

Dear Secretary Caton:

Enclosed for filing in the above-captioned case are an original and two (2) copies of the Ex Parte Reply Comments of the Missouri Public Service Commission in the above captioned proceeding, CC Docket 96-150, for inclusion in the public record pursuant to 47 C.F.R. § 1.1206.

Please date and time stamp the extra copy, which is enclosed, and return it to me in the enclosed self-addressed envelope.

If you should have any questions regarding the enclosures or other issues with respect to the filing submitted on behalf of the Missouri Public Service Commission, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Eric Witte".

Eric Witte

Assistant General Counsel

573-751-4140

573-751-9285 (Fax)

Enclosure

cc: Service List

No. of Copies rec'd
List A B C D E

021

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the Telecommunications)
Act of 1996;)
)
Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

RECEIVED
SEP 18 1996
FCC MAIL ROOM

**EX PARTE REPLY COMMENTS OF THE
MISSOURI PUBLIC SERVICE COMMISSION**

In a Notice of Proposed Rulemaking (hereinafter "NPRM") released July 18, 1996, the Federal Communications Commission ("the FCC") requested comments on a number of issues regarding the implementation of the accounting safeguards of §§ 271 and 272 of the Telecommunications Act of 1996 ("the 1996 Act"). In its initial comments, the Missouri Public Service Commission ("MoPSC") disputed the FCC's tentative conclusion that it has jurisdiction to promulgate rules under §§ 271 and 272 regarding intrastate services. Additionally, the MoPSC urged the FCC to incorporate the recommendations of the two resolutions by the National Association of Regulatory Utility Commissioners regarding: 1) the implementation of § 271 of the 1996 Act; and, 2) audit guidelines and analysis. Initial Comments of the Missouri Public Service Commission, filed August 26, 1996.

The purpose of the MoPSC's Ex Parte Reply Comments is to address assertions made by the United States Telephone Association ("USTA") that, "[w]ith the acceleration of competition into local markets and the implementation of price cap regulation with the no sharing option, there is no

need to continue to apply the current Part 64 and 32 affiliate transactions rules.” USTA Comments at 12. The MoPSC takes exception to this assertion.

The FCC should not forbear from applying its cost allocation and affiliate transactions rules. Cost allocation and affiliated transaction rules are still necessary.

In its comments, USTA “urges the Commission to free incumbent exchange carriers from all its rules for accounting and affiliate transactions that are no longer necessary in a competitive marketplace.” USTA Comments at 12. However, for many services such as local exchange service, there is not as yet widespread competition in the United States telecommunications markets. Competition is, at best, in its infancy, and it would be unwise to end cost allocation (and thereby separations) and affiliate transaction rules at this time.

Moreover, not all incumbent local exchange carriers are under price cap regulation in both the federal and state jurisdictions. Therefore, incentives still exist at the state level, and will continue to exist until all carriers come under price cap regulation at the state jurisdiction, to improperly allocate unregulated costs to the regulated entity. Such misallocation could mask high rates of return through the payment of unjustifiably high expenses paid to an affiliate. In the absence of appropriate regulatory safeguards, carriers would be able to take advantage of affiliate transactions until true competition actually arrived.

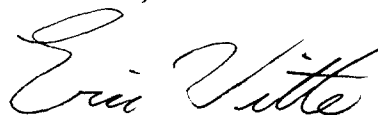
Additionally, without Part 64 allocation rules, accurate distribution of costs into pools for purposes such as allocating the Universal Service Fund would no longer be possible. The separations process only makes sense when dealing with regulated costs. If allocations between regulated and non-regulated costs are ceased, the separations process would be eliminated by default. Therefore,

if the FCC is persuaded to consider the changes suggested by USTA, the proposal must be referred to a Federal-State Joint Board before actually making changes to the separations process.¹

Finally, because a number of incumbent local exchange companies in Missouri will continue under cost of service regulation, cost allocation rules will be necessary for the foreseeable future.

Respectfully submitted,

Eric Witte, Missouri Bar No. 39361



Attorney for the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
573.751.4140
573.751.9285 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document have been served by first class United States mail, postage prepaid, to all persons listed on the attached service list, and that two copies have been served to the FCC's Secretary for inclusion in the public record pursuant to 47 C.F.R. § 1.1206, this 12th day of September, 1996.



¹ 47 U.S.C. § 410(c) provides:

The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this title, may refer to any other matter, relating to common carrier communications of the joint Federal-State concern, to a Federal-State Joint Board.

Service List

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W. -- Room 814
Washington, D.C. 20554

The Honorable Rachelle B. Chong, Commissioner
Federal Communications Commission
1919 M Street, N.W. -- Room 844
Washington, D.C. 20554

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W. -- Room 832
Washington, D.C. 20554

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

A. Richard Metzger, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Mary Beth Richards, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Kathleen Levitz, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Laurence Atlas, Associate Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Ernestine Creach
Common Carrier Bureau, Accounting and Audits Division
2000 L Street, N.W.
Suite 257
Washington, DC 20554
<<Also send diskette in WP 5.1>>

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, DC 20037

Mary Beth Richards, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Kathleen Levitz, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Laurence Atlas, Associate Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Ernestine Creech
Common Carrier Bureau, Accounting and Audits Division
2000 L Street, N.W.
Suite 257
Washington, DC 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, DC 20037